

# Equal Opportunity Commission

## Annual Report

2023-24



# Annual report 2023-24

The Western Australian Equal Opportunity Commission is committed to providing accessible services to Western Australians from all culturally and linguistically diverse backgrounds. If you have difficulty in understanding the annual report, you can contact us on toll free 1800 198 149 and we will arrange an interpreter to effectively communicate the report to you.



This report provides information on the performance of the Equal Opportunity Commission in the 2023-24 financial year.

## Disclaimer

The Commission is committed to providing quality services to its customers and makes every attempt to ensure accuracy, currency and reliability of the information contained in this publication.

## Feedback

As the Commission is constantly striving to improve services, we welcome any comments, observations or queries relating to the contents of this annual report.

## Accessibility

On request, large print or copies of this report in an alternative format can be obtained from the Equal Opportunity Commission.

## Further enquiries

Commission staff deal with any general concerns or queries about rights and responsibilities under equal opportunity laws.

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Commission of Western Australia

## Acknowledgment of Country

The Commission acknowledges the Aboriginal peoples of Western Australia as the traditional custodians of the land on which we work and live, and recognise their continuing connection to land, water and community. We pay respect to Elders past, present and emerging.

# Contents

|  |    |
|--|----|
| Letter of compliance.....              | 1  |
| Commissioner’s foreword .....          | 2  |
| About the Commission.....              | 3  |
| Our vision                             | 3  |
| Our mission                            | 3  |
| Enabling legislation                   | 3  |
| Administered legislation               | 4  |
| Our strategic objectives               | 5  |
| Our structure                          | 6  |
| Strategy and engagement services ..... | 7  |
| Education and training                 | 7  |
| Communications                         | 12 |
| Whole of Commission work .....         | 16 |
| Speaking engagements                   | 16 |
| Partnerships and networks              | 16 |
| Submissions                            | 18 |
| Research                               | 18 |
| Enquiries .....                        | 19 |
| Conciliation services .....            | 22 |
| Complaint process                      | 22 |
| Conciliation                           | 28 |
| Legal services .....                   | 30 |
| Disclosures .....                      | 35 |
| Appendices .....                       | 37 |

# Letter of compliance



Hon John Quigley LLB JP MLA  
Attorney General;  
Minister for Electoral Affairs



To the Hon John Quigley MLA  
Attorney General

In accordance with section 95 of the *Equal Opportunity Act 1984*, I hereby submit for your information and presentation to Parliament, the Annual Report of the Commissioner for Equal Opportunity for the financial year ending 30 June 2024.

The Report covers the work, functions, and activities of the Equal Opportunity Commission during the reporting period.

A handwritten signature in black ink that reads "John Byrne". The signature is written in a cursive, flowing style.

Dr John Byrne AM  
Western Australian Commissioner for Equal Opportunity

2 September 2024

# Commissioner's foreword



Discrimination, harassment, and victimisation continue to limit the lives of many people, not only in Western Australia but across the world. This demonstrates the importance of the *Equal Opportunity Act 1984* and the work of the Commission. One element that helps the Commission to achieve satisfactory outcomes is complainants and respondents who engage positively to resolve their matters in good faith. I offer my sincere thanks to those people who have engaged in our processes this year in such a manner.

In the 2023-24 financial year the Commission has had a period of stabilisation which is evident in the outcomes achieved by its individual sections.

The Strategy and Engagement team, now in its third year of formation, provided outreach and training to 2,402 people in most regions across Western Australia.

The Commission is grateful to all the organisations that have worked with us in 2023-24, allowing us to collaborate on complaints clinics, information stalls, events, and information clinics to provide greater reach across the largest state in the country.

Following previous years' public discourse around sexual harassment and racial harassment, organisations are now focusing their attention on assessing organisational risk in these areas and as such the community education and training officers presented Equal Opportunity Law to 474 people as the most attended course at the Commission.

This period of stabilisation has also allowed the Conciliation Services team to further improve the complaints process through the Integrated Courts Management System.

Finally, I would like to thank the hard-working staff at the Commission. It makes the role of Commissioner for Equal Opportunity much more satisfying knowing I have staff so passionate about their work and unwavering in their efforts to achieve good outcomes.

A handwritten signature in black ink that reads "John Byrne". The signature is written in a cursive, flowing style.

Dr John Byrne AM  
Western Australian Commissioner for Equal Opportunity

# About the Commission

The Equal Opportunity Commission supports the Commissioner in the administration of the *Equal Opportunity Act 1984* (the Act).

The main objective of the Act is to “promote equality of opportunity in Western Australia and to provide remedies in respect of discrimination on the grounds of sex, marital status, pregnancy, sexual orientation, family responsibility or family status, race, religious or political conviction, impairment, or age, or involving sexual or racial harassment or, in certain cases, on gender history grounds.”

The Commissioner carries out the role by conducting community education and training, investigating and endeavouring to conciliate complaints of discrimination, and providing information to the community about equal opportunity.

The Commissioner is also involved in several projects designed to address the underlying causes of discrimination, often in partnership with other agencies, which are mentioned in this report.

The current Strategic Plan to June 2024 outlines our vision, mission, and strategic objectives.

## Our vision

Leading the way towards eliminating unlawful discrimination, harassment and victimisation in our community.

## Our mission

Our mission is to promote both formal and substantive equality towards achieving an inclusive community, free of discrimination.

## Responsible Minister

The Hon John R Quigley LLB JP MLA  
Attorney General; Minister for Electoral Affairs.

## Enabling legislation

The office of the Commissioner for Equal Opportunity was established in 1985 under Part VII, Division I of the *Equal Opportunity Act 1984* (the Act) as amended.

The Commissioner for Equal Opportunity is appointed by the Governor.

The Act promotes equality of opportunity in Western Australia and provides remedies in respect of discrimination on the grounds and areas specified.

## Administered legislation

The Commissioner for Equal Opportunity also has functions under specified parts of the following Acts:

- *Industrial Relations Act 1979 – section 29*
- *Public Interest Disclosure Act 2003 - Part 3 section 15(4)*
- *Spent Convictions Act 1988 – Part 4.*

## Other key legislation impacting on the Equal Opportunity Commission's activities:

### State

- *Auditor General Act 2006*
- *Disability Services Act 1993*
- *Financial Management Act 2006*
- *Fines, Penalties and Infringement Notices Enforcement Act 1994*
- *Freedom of Information Act 1992*
- *Gender Reassignment Act 2000*
- *Government Employees Superannuation Act 1987*
- *Minimum Conditions of Employment Act 1993*
- *Public Interest Disclosure Act 2003*
- *Public Sector Management Act 1994*
- *Salaries and Allowances Act 1975*
- *State Administrative Tribunal Act 2004*
- *State Records Act 2000*
- *State Supply Commission Act 1991*
- *Work Health and Safety Act 2020*
- *Workers Compensation and Injury Management Act 1981*

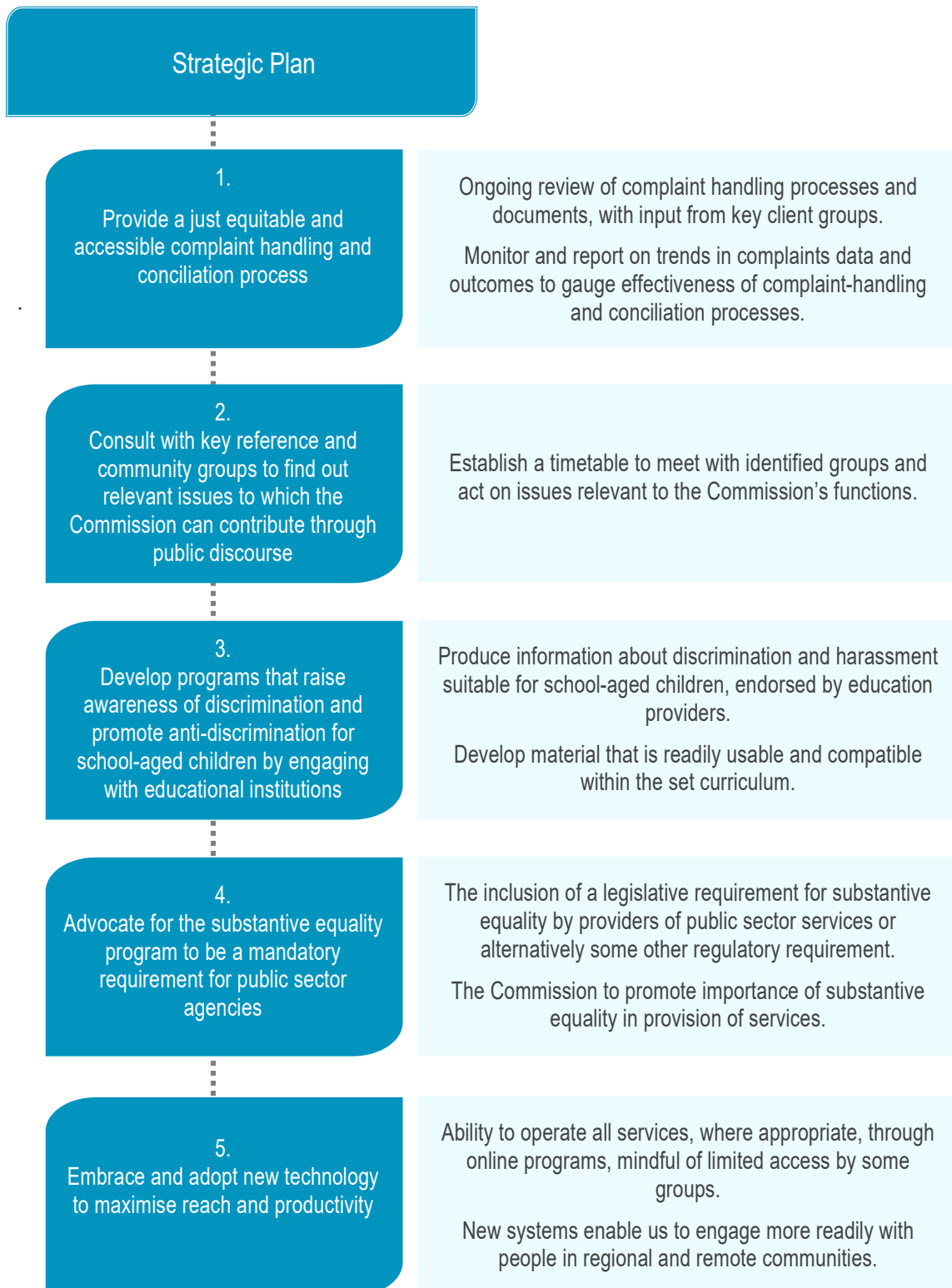
### Commonwealth

- *Age Discrimination Act 2004*
- *Australian Human Rights Commission Act 1986*
- *Disability Discrimination Act 1992*
- *Fair Work Act 2009*
- *Racial Discrimination Act 1975*
- *Sex Discrimination Act 1984*

## Our strategic objectives

The Commission's strategic plan 2022-24 consisted of the five objectives listed below to deliver and improve the Commission's services through engagement with and response to the Western Australian community.

Alongside each objective are outcomes to measure the achievement of these objectives. This focus shaped how we lead the way towards the elimination of discrimination and harassment in Western Australia and promoted formal and substantive equality for its people in 2023-24:



## Our structure

The Commission has now completed a full financial year under the revised structure put in place to better align itself to the Commissioner's statutory functions and streamline its services.

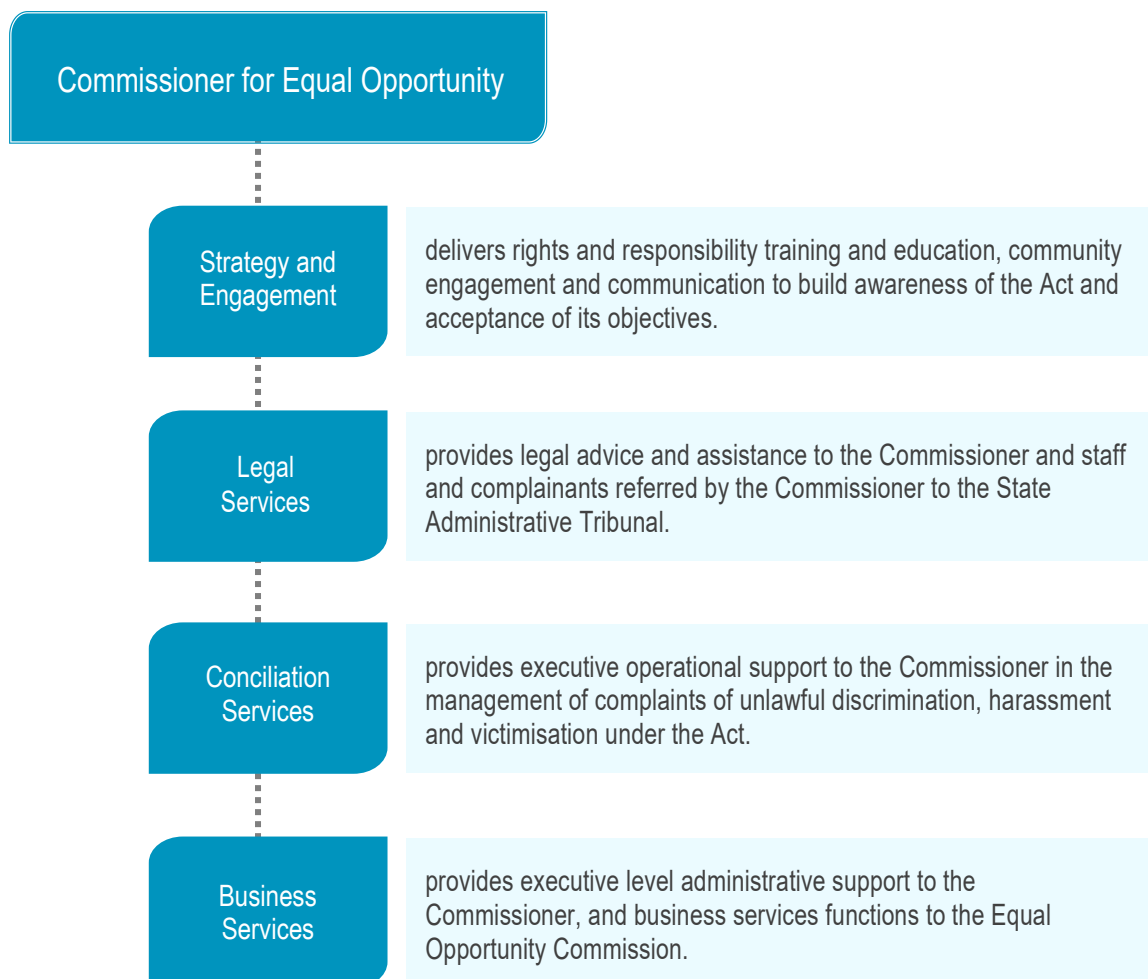
Strategy and Engagement Services section fulfils the Commissioner's statutory function to enhance understanding of the principle of equal opportunity, as well as increase awareness of the provisions contained in the *Equal Opportunity Act 1984* (the Act) by the WA community.

Legal Services section assists the Commissioner for Equal Opportunity and staff to carry out the statutory responsibilities contained in the Act and other relevant legislation by researching and providing advice on matters of law, jurisdiction and policy. The legal officers also represent complainants referred under s93 of the Act before the State Administrative Tribunal and Supreme Court.

Conciliation Services section delivers the Commissioner's statutory function of investigation and endeavouring to resolve complaints of alleged unlawful discrimination, harassment and victimisation.

Business Services section provides business support to the Commission and liaises with the relevant sections of the Department of Justice that provide administrative support to the Commission.

All four sections provide support to the Western Australian Commissioner for Equal Opportunity whose statutory task is to administer the Act.



# Strategy and engagement services

The Commission's Strategy and Engagement Services has a broad range of functions:

- Delivers education and training to businesses, not for profit organisations and government agencies to increase understanding of rights and responsibilities under the *Equal Opportunity Act 1984* (the Act)
- Conducts information and awareness sessions for advocacy organisations, university and TAFE classes and community groups on rights under the Act
- Organises public events such as lectures to provide dialogue on current issues related to the Act
- Provides communications on topical issues to the public through the website, bulletins and social media
- Participates in community events.

## Education and training

We offer education and training on general equal opportunity and anti-discrimination as well as on specific issues such as sexual harassment or any other ground that relates to equal opportunity. The community education officers deliver most courses in person and some rights-based information sessions virtually.

Businesses and government organisations request training to understand and equip their managers and employees with skills to prevent discrimination and harassment in the workplace.

Educational institutions and community groups also request specific training to raise awareness about rights and responsibilities. We offer a range of training sessions to suit different organisational and community needs. Our courses range from general introductory sessions to more focused training specific to participants' roles or organisations.

Training can be delivered directly to teams in their workplaces, or via public training sessions held at the Commission which are open to all members of the public. Training is provided on a moderate fee-for-service basis. Rights-based training is free to community organisations.

Training is delivered either in a standard or customised format. Standard training courses are designed by the Commission team on set topics such as Equal Opportunity Law, Contact Officer, Equity Grievance Officer, Sexual Harassment - Recognition, Responsibility and Response, and Workplace Culture - Discrimination, harassment and bullying. Organisations can also request customised training related to the Act to be developed to specifically address their interest.



Community Education and Training Officer Greg Watson conducting Contact Officer Training

In 2023-24 we delivered 85 fee-for-service sessions to approximately 1,205 participants and 81 rights-based and outreach sessions to 1,197 people.

**Figure 1: Education and training participant numbers 2023-24**

|                        | No. of participants |
|------------------------|---------------------|
| Calendar Courses*      | 43                  |
| Organisation Training* | 1162                |
| Rights-Based Education | 738                 |
| Substantive Equality   | 59                  |
| Guest Speaker          | 400                 |

\* Fee for service

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*In 2023-24 we delivered **166** education and training sessions to **2,402** participants*

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Our most attended course in 2023-24 was *Equal Opportunity Law* with 474 participants throughout the year, followed by 405 people attending the *Workplace Culture – Discrimination, harassment and bullying* course and 186 attending the *Sexual Harassment - Recognition, Responsibility and Response* course.

**Figure 2: Fee for service training courses 2023-24**

|  | No. of participants |
|--|---------------------|
| Equal Opportunity Law                                      | 474                 |
| Workplace Culture - Discrimination, Harassment & Bullying  | 405                 |
| Sexual Harassment - Recognition, Responsibility & Response | 186                 |
| Contact Officer Role                                       | 115                 |
| Employee Support Officer                                   | 16                  |
| Equity Grievance Officer Role                              | 9                   |

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*Our most attended training course in 2023-24 was **Equal Opportunity Law** with **474** participants*

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### Where we provided training and outreach in the regions

In 2023-24 we provided training and outreach to towns in the Pilbara, Kimberley, Mid-West, Gascoyne, Goldfields-Esperance, Southwest and Wheatbelt. The Strategy and Engagement team monitors issues through the complaint handling system, as well as through community organisations, to plan which areas of the State we will visit throughout the year.

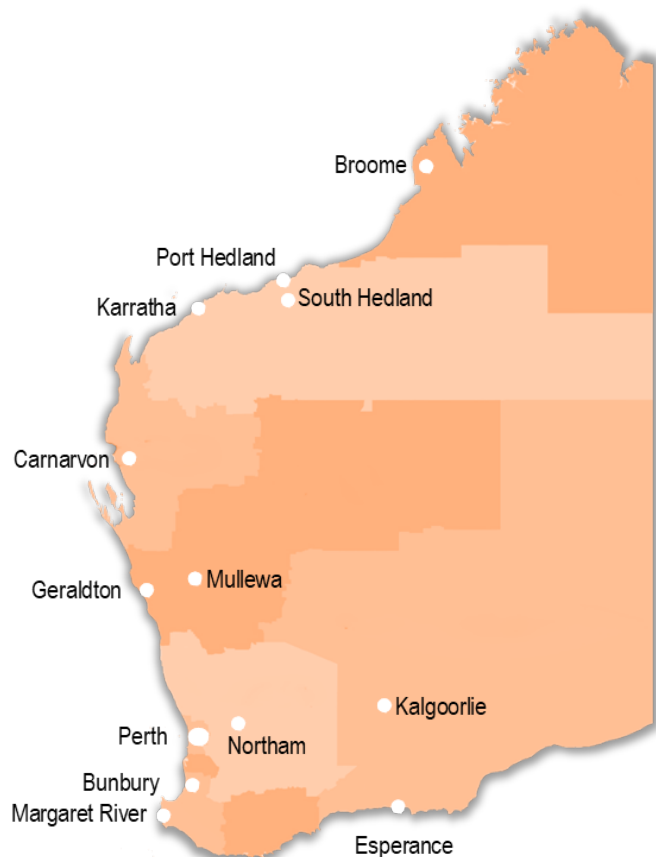
Western Australia is a large state, so careful planning is undertaken to ensure rural and remote areas of WA which need the Commission's services are not missing out on education and outreach.

Generally, when one of the Commission's fee-for-service training courses is booked for a regional area, the team will also try to engage community organisations for rights-based education sessions.

#### July 2023 in the Pilbara

In July the Community Education and Training team conducted Sexual Harassment – Recognition, Responsibility and Response Training in South Hedland. The team also provided rights-based training to Foundation Housing in South Hedland, Wangka Maya Pilbara Aboriginal Language Centre, Wirraka Maya Health Service and Wirraka Maya Health Service Aboriginal Corporation.

Figure 3: Regional visits 2023-24



#### August 2023 in the Mid-West and Pilbara

In August the Community Education and Training team conducted Contact Officer Training in Geraldton and Sexual Harassment - Recognition, Responsibility and Response training in Karratha.



Community Education and Training Officers Greg Watson and Kayla Manuel in Kalgoorlie

### September 2023 in the Wheatbelt, Pilbara and Gascoyne

In September the team conducted Sexual Harassment – Recognition, Responsibility and Response training in Karratha and Port Hedland and Contact Officer training in Northam. Rights based education was also provided to Ngala, Regional Alliance West, Shire of Carnarvon, Yamatji Marlpa Aboriginal Corporation and Yamatji Southern Regional Corporation in Carnarvon, and Woorooloo Prison Farm in Woorooloo.

### November 2023 in the Goldfields and Kimberley

Our Community Education and Training officers delivered Contact Officer training and Sexual Harassment – Recognition, Responsibility and Response training in Kalgoorlie and Broome rights-based training was provided for Eastern Goldfields Regional Prison.



Manager Strategy and Engagement Diana MacTiernan providing Community Education training in Broome

### January and February 2024 in the Southwest

In January and February, the training team delivered Workplace Culture – Discrimination, Harassment and Bullying sessions in Bunbury. The Community Education Team also provided rights-based education to the Bunbury Geographer Chamber of Commerce and Industry and the Southwest Community Legal Centre, also in Bunbury.

### Regional Awareness and Accessibility Program

Members of the Commission’s Strategy and Engagement team participated in the Regional Awareness and Accessibility Program (RAAP) coordinated by the WA Ombudsman.

The program involves several State and Federal agencies travelling together to regional and remote areas in WA to provide information about the work their agencies do in complaint handling and to offer service to those areas.

This financial year the RAAP visited the Gascoyne and Goldfields-Esperance. The RAAP is an important service to these areas as many community members find it difficult to access the services of agencies based in the metropolitan area.



Community Education and Training Officer Stephen Goodall with the RAAP group in Carnarvon

## Evaluations

Participants who undertake fee-for-service training complete a post evaluation questionnaire. The questionnaire asks them to rate their level of knowledge before attending the course and their level of knowledge after having completed the course. The data collected from these questionnaires indicates a shift in participant perception of their knowledge of course content, including their knowledge about the Act. This shift is presented in Figure 4 and Figure 5.

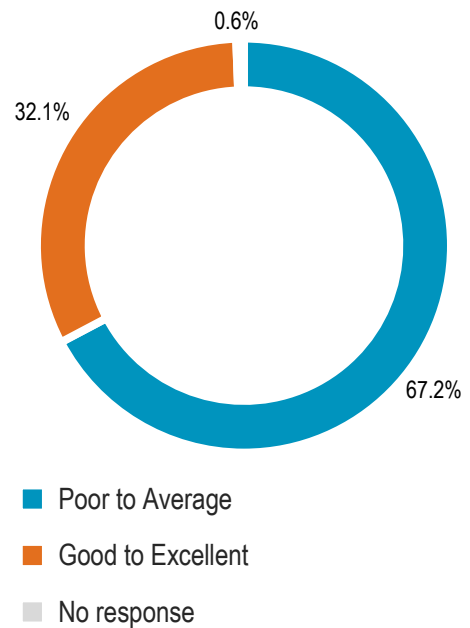
The figures demonstrate that after attending a training course, participant perceptions of having ‘good to excellent’ knowledge and understanding about the course topic increased from 32.1 percent to 93.1 percent.

In addition to these statistics, participant feedback indicates the positive experiential impact that attending the courses has for participants, who describe training as interactive, interesting and engaging.

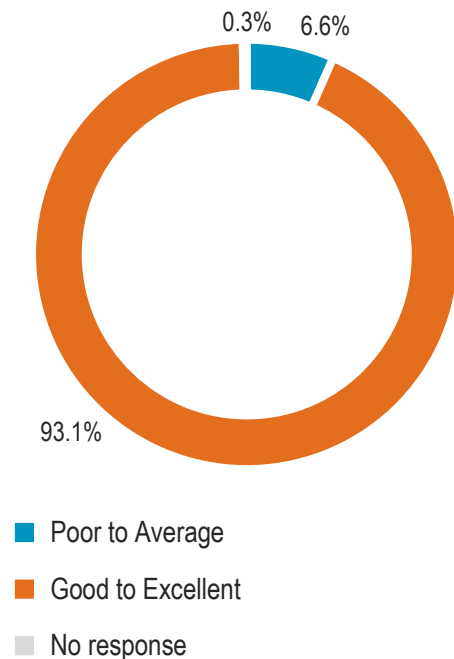
The following is a sample of participant responses from the 2023-24 training evaluations, when asked what they liked most about the training:

- “Trainer was very interactive and funny, made the training interesting and enjoyable,”
- “I enjoyed the trainers’ presentations and have learned a great deal,”
- “Great use of the facilitator skills, they opened up the students to some great conversations,”
- “Style, delivery was amazing! I loved the interactivity,”
- “Great presentation and ability to engage, kept things interesting with lots of examples and knowledge.”

**Figure 4: Participants’ knowledge before training for 2023-24**



**Figure 5: Participants’ knowledge after training for 2023-24**



*After attending training, the participants ‘good to excellent’ knowledge increased from **32.1%** to **93.1%***

## Communications

We participate in a range of community engagement activities as part of our commitment to increasing public understanding and discussion of human rights and responsibilities, and how the Act relates to people's experiences of discrimination and harassment and how they access their rights.

## Events

In the 2023-24 year we recognised ten specific days on the inclusion and diversity calendar: We also continued our popular 'Stall in the Mall' series.

### Stalls in the Mall series

In the 2023-24 financial year the Commission held four stalls in the Murray Street Mall in Perth's Central Business District as part of its 'Stall in the Mall' series.

The Commission held stalls to mark NAIDOC Week, Seniors' Week, International Day of People with Disability, International Women's Day and Harmony Week.

For the International Women's Day stall the Commission was joined by the Health and Disability Services Complaints Office.



Dr John Byrne on the stall for International Day of People with Disability

## NAIDOC Week

The Commission participated in the Mirrabooka NAIDOC Week event again in the 2023-24 year. This has become a regular community event on the Commission calendar and is always well supported by the Mirrabooka community with plenty of family friendly activities and information.

The Commission provided an information stall for community members wanting to learn more about their rights under the Act, especially with regards to race discrimination and racial harassment. There was also badge making for the young and young at heart.



Community Education and Training Officer Kayla Manuel at Mirrabooka NAIDOC event

## Pride Fair Day

The Commission celebrated another year of WA Pride Month in November 2023 by attending Pride Fair Day at Hyde Park.

This year the Commission was one of 117 stalls who participated in Pride Fair Day.

Manager Strategy and Engagement Diana MacTiernan said it was a busy day with a steady flow of people interested to know more about the *Equal Opportunity Act 1984* and kids keen to make equality themed badges.

"Pride Fair Day always has such a wonderful and inclusive family and community atmosphere, which makes it the perfect platform for the Commission to provide outreach to the LGBTIQA+ community of WA," she said.

Diana also said with so many other participants it was a good opportunity to network with other organisations with similar interests.

"Many of the stall participants were key stakeholders for the Commission, so we were also providing outreach by liaising with other stalls at the fair," she said.



Staff and family with stall participants at Pride Fair Day

## Commission visit to Boronia Pre-release Centre

The Commissioner visited Boronia Pre-release Centre with Strategy and Engagement team members Kayla Manuel and Sarah Johnston to give the winner of the 2024 Aboriginal Calendar artwork her award in the lead up to the International Day of Human Rights.

"It was wonderful to meet the artist and hear her speak about her inspiration for the artwork and how she created it," Dr Byrne said.

Following the award giving, the award recipient took Commission staff on a tour of the prison.

Dr Byrne said he found the tour very interesting and it showed a supportive atmosphere for its residents.

"I thought the education and work programs had a lot of potential to prepare the women for life outside Boronia."



Dr John Byrne at Boronia Pre-release Centre

## International Women's Day

The Commission kicked off International Women's Day with a 'Stall in the Mall' followed by our speed mentoring event, which is now in its eighth year.

Ten mentors gave up their time this year from busy roles managing entrepreneurial, government and nongovernment organisations across many different fields.

Mentees included students from Mt Lawley Senior High School and Mercedes College who benefited from the advice shared by inspirational women who have gone before them.

WA Equal Opportunity Commissioner Dr John Byrne thanked everyone for investing their time in this event. "This is an event that involves women helping to strengthen other women in a very tangible way and certainly is in keeping with this year's theme Count Her In: Invest in women," he said.



International Women's Day Speed Mentoring

## Katanning Harmony Festival

The Equal Opportunity Commission participated in the Katanning Harmony Festival in March 2024 to provide outreach to this vibrant, diverse community in Western Australia's Great Southern region.

The annual festival celebrates the multicultural diversity of Katanning Shire with activity, food and information stalls. The Equal Opportunity Commission hosted a stall this year to provide outreach to the community and rights-based information with a focus on racial harassment, race discrimination and religious conviction discrimination.

Communications Officer Sarah Johnston said given Katanning's diversity, it made perfect sense for the Commission to participate in the festival.

"Locals and stall holders who visited our stall commented on how pleased they were to see the Commission there and expressed their interest in future outreach work in the area," she said.



Community Education and Training Officer Kayla Manuel at Katanning Harmony Festival

## Media and communications

Our media engagement and broader public communications activities are an important part of our work to increase public understanding and discussion of the Act and what we do.

We are not always able to respond to requests for public comment as our role in complaint handling is a confidential and impartial conciliation process, and public comment or information about complaints we receive at any stage of proceedings may compromise this work.

Most of our public comment and media interviews are provided by the Commissioner, and the Commission's corporate executive team.

## Website

The Commission has been part of the WA.gov.au platform for three years now. While the Commission has responsibility for content, the Department of the Premier and Cabinet oversees the function, security and format of this site. In 2023-24 the Commission's page had 143,186 views. The most viewed page of the website was the home page with 39,420 views followed by the *Equal Opportunity Act 1984* on the publications page at 19,664 views.

## Social media

We use Facebook to share information and news updates with social media users. The post with the most organic reach in the 2023-24 financial year was a notification about the two expressions of interest being run to procure Aboriginal artwork for the 2025-26 Aboriginal Calendar and for an Aboriginal graphic designer to complete a graphic for our publication and promotional material. This post reached 1,600 people.

## Bulletins

We produce monthly ebulletins from February through to December to help keep subscribers up to date with news about discrimination and harassment, the Act, and the Commission's work.

These publications went to 4,401 subscribers in 2023-24 from across the state, Australia and internationally.

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*The Facebook post with the most impact in the 2023-24 financial year was promoting two expressions of interest for Aboriginal artists and designers to supply an Artwork for the Aboriginal Calendar for the 2025 calendar year and the 2025-26 financial year. The Aboriginal calendar is one of the Commission's most popular promotional products, and the calendar provides valuable outreach to the Aboriginal community.*

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# Whole of Commission work

There is some work the Commission engages in that requires cross-sectional and collaborative engagement by Commission officers.

One way that this occurs is when the Commission is approached to make submissions to parliamentary inquiries at both state and federal level, as well as the development of legislation that might impact on the *Equal Opportunity Act 1984 (the Act)*.

Commission officers also engage in external projects and reference groups within the public and private sectors that work to examine, review and develop policies and practices relating to equality and substantive equality.



Dr John Byrne with former Sex Discrimination Commissioner Kate Jenkins and Minister for Women's Interests the Hon Sue Ellery

## Speaking engagements

The Commissioner and other Commission staff members regularly accept invitations to speak to students, community groups, lawyers, employee and employer groups, and at community events. Speaking topics range from specific issues in human rights and anti-discrimination law to broader topics of diversity and inclusion.

This year Commission staff spoke at:

- The Mining Industry Summit 2023 on a panel as part of the Equal Opportunity Commission's involvement with the Mental Awareness, Respect and Safety program.
- The Restorative Justice Empowering Victims conference held by the Department of Justice.

## Partnerships and networks

We are involved in a range of issue and location based advisory groups and networks. These include multicultural and multi-faith networks, disability networks, access and inclusion advisory groups, and public sector interagency networks. Additionally, we have initiated and/or contributed to various consultation groups and cross-agency collaboration networks including:

- **The New and Emerging Communities Reference Group:** This reference group is hosted by the Equal Opportunity Commission and includes representatives from migrant and refugee advocacy groups as well as representatives from State Government agencies who focus on providing a service to these cohorts. The group meets to discuss issues that impact migrants and refugees based in WA and develop strategies for addressing these issues.

- **Northern Suburbs Community Legal Centre (NSCLC):** The Commission signed a MoU with the NSCLC to provide education and outreach to community organisations that work with the legal centre.
- **Mental Awareness, Respect and Safety (MARS) program:** The MARS program is a whole-of-government initiative that aims to improve the health, safety and wellbeing of workers and others in the mining industry. The Commission assists the initiative with cross-promotion and by providing input to education and training to industry members.
- **Stronger Together:** The Commission is part of the implementation group for this whole-of-government initiative which aims to develop strategies for gender equality in Western Australia.
- **Sponsorship of WA MEAA Awards:** Each year the Commission sponsors the Social Equity Reporting category at the WA Media, Entertainment and Arts Alliance awards. In the 2023-24 financial year the winners were ABC journalists Rebecca Turner and Nicholas Perpich for their story *Father Damian's dark playbook*.
- **Western Australian Multicultural Awards 2023:** WA Commissioner for Equal Opportunity Dr John Byrne participated on the judging panel for this event.
- **State Language Policy network:** The Commission works with the Office of Multicultural Interests (OMI) to provide comment on the policy and attends quarterly meetings hosted by OMI.
- **Play by the Rules (PBTR) partnership:** Play by the Rules is a national interactive education and information initiative which promotes inclusivity in sport free from discrimination and harassment. The Commission works in partnership to help promote campaigns run by PBTR and provides sponsorship. Community education officers also conducted Member Protection Information Officer sessions.
- **University intern partnerships:** The Commission accepts interns studying areas relevant to equal opportunity and human rights. In the 2023-24 financial year the Commission hosted two interns: One studying Communications at the University of Western Australia during the first half of the year, and one studying Human Rights at Curtin University in the second half of the year.
- **CEOs for Gender Equity:** The Equal Opportunity Commission formed the inaugural group of CEOs in 2012 and is now one of the 80 members from the corporate, not-for-profit and government sectors.
- **Australian Council of Human Rights Authorities:** The Commission is one of nine anti-discrimination and human rights authorities which meet to discuss issues impacting Australia's human rights obligations.
- **Seniors Strategy Implementation Group:** An Age-friendly WA: State Seniors Strategy 2023-2033 is a whole-of-government strategy providing guidance to government, so seniors feel valued, safe and empowered. The Commissioner is part of the implementation group driving this strategy.
- **Ageism language guide:** The Commission provided feedback on the language guide to the Department of Communities which was the agency producing the guide.

## Submissions

The Commission made submissions on issues that relate to its functions under the *Equal Opportunity Act 1984* including the following.

### **Inquiry into support for autistic children and young people in schools**

The Commission made the submission to the Education and Health Standing Committee as part of its oversight role for the Policy Framework for Substantive Equality. The submission advocated for maintaining and strengthening through legislation the Policy Framework for Substantive Equality as an essential tool for organisations to achieve equality of outcomes in the services they provide to the community.

### **Statutory Review of the *Building and Construction Industry Training Fund and Levy Collection Act 1990***

The Commissioner met with Construction Training Fund Director Strategic Projects Kylie Armstrong in her capacity as the Executive Officer appointed in the statutory review of the *Building and Construction Industry Training Fund and Levy Act 1990* in Western Australia to discuss diversity in the context of the terms of reference of the review. In this submission the Commissioner highlighted that any element of workplace culture which does not welcome diversity can be a barrier to the provision of equal opportunity. He went on to add that the greatest success in improving diversity is achieved by organisations where experienced human resource practitioners are employed and supported by executive management in endeavouring to improve workplace culture and provide avenues to address sexual and other forms of harassment.

## Research

### **Children, Discrimination and Rights Education**

This research project commenced at the beginning of the 2022-23 financial year and responded to Objective 3 of the Commission's Strategic Plan. It benefited from participating in an intern partnership program with Edith Cowan University.

Commission Strategy and Engagement Officer Dr Greg Watson expanded this research to year six students and teachers across the state to gather information about how best to deliver discrimination and rights education to this cohort within Western Australia.

# Enquiries

We provide a free, accessible and personalised information service to help people understand their rights and responsibilities under the *Equal Opportunity Act 1984* (the Act).

People enquire about discrimination and harassment, the Act and the functions of the Equal Opportunity Commission.

The enquiry roster is staffed by Commission officers.

## Mode of enquiry

In the 2023-24 financial year the Commission responded to 1,108 enquiries via telephone, email, post and in person.

Most enquiries in the financial year were by telephone at 61.9 percent, followed by written enquiries at 36.8 percent, which includes by email and post, and then in person at 1.3 percent.

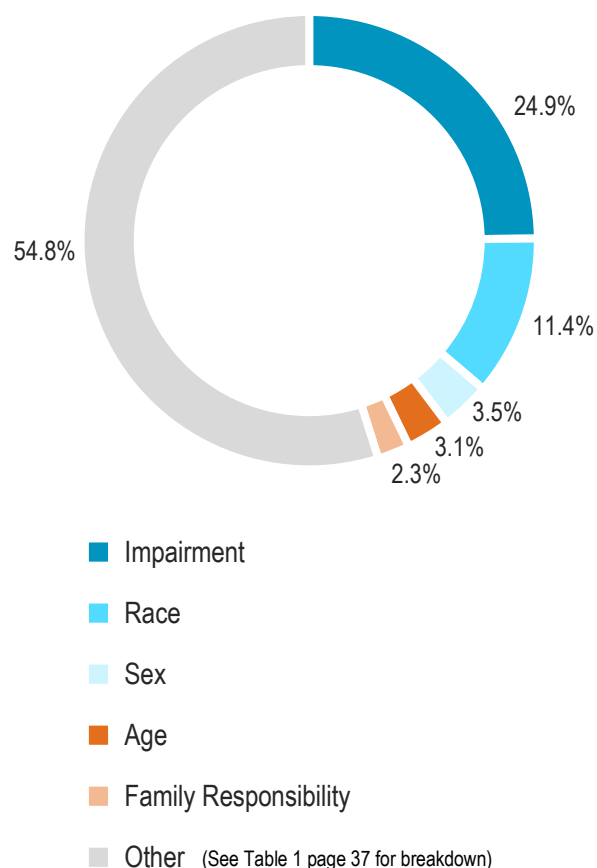
Of the written enquiries the majority (91.7%) were lodged electronically by email, the website or Facebook.

## Ground and area

In 2023-24, enquiries about impairment were highest at 24.9 percent. Followed by race at 11.4 percent.

Most enquirers indicated employment (37.4%) as the area of public life concerning them, followed by goods, services and facilities at 15.1 percent.

**Figure 6: Top five enquiries by ground 2023-24**



## 1. Enquiry Summary

### Impairment in employment

The enquirer applied for a job as a cleaner for a company that provides cleaning services for mine sites. She went through the recruitment process and was accepted for the job and resigned from her previous job. She then learned she had to complete online modules. She told the recruiter she had reading difficulties due to a learning impairment, and the recruiter brushed it off; however, the recruitment process was suspended after she completed the first module. The company and recruiter refused to return her calls.

*Outcome: Enquiry officer explained the complaint process and sent the enquirer a complaint form.*

## Enquirers

In 2023-24 most of the enquiries were from individuals (85.0%). A total of 15.0 percent were from private enterprise, government agencies and non-government organisations.

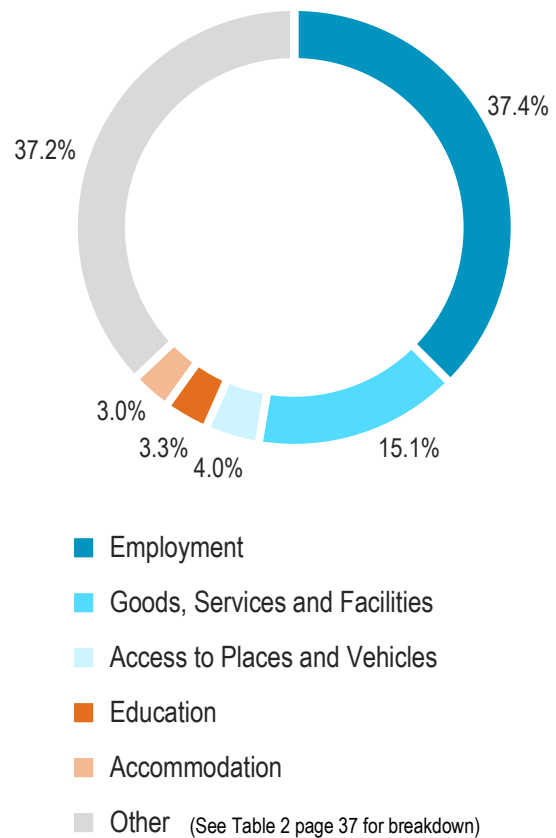
Of those individuals who disclosed their gender, similar to previous years, more women (49.9%) than men (39.7%) made enquiries. Non-binary people, as well as other genders, made up less than one percent.

Organisations made up 9.6 percent of enquiries this year, largely due to the popularity of the 2024-2025 Aboriginal Calendar which generated a lot of enquiries from organisations wanting the calendar in their workplaces. Requests for publications, an explanation of the Act or other legislative issues were at 10.5 percent, which would include individuals and organisations making these types of requests.

Over 71 percent of all enquiries were people reporting general allegations of discrimination or requesting information about potential complaints.

Employers and potential respondents seeking information about their responsibilities under the Act were at 2.9 percent. This is a lower figure than the previous financial year, which may indicate a better understanding of the legislation, now that it has been in place for 40 years.

**Figure 7: Top five enquiries by area 2023-24**




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*“Your calendar is strong. This will also raise more awareness for supporting a better future for all standing against racism.” – Wadjuk woman requesting a copy of the 2024-2025 calendar.*

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## Residence

In 2023-24 most enquiries were from the metropolitan area (50.8%). Within the metropolitan area the highest number of enquiries were from the South Metropolitan area at 23.3 percent.

In regional Western Australia the Southwest Region recorded the most enquiries at 20.5 percent.

## Outcomes

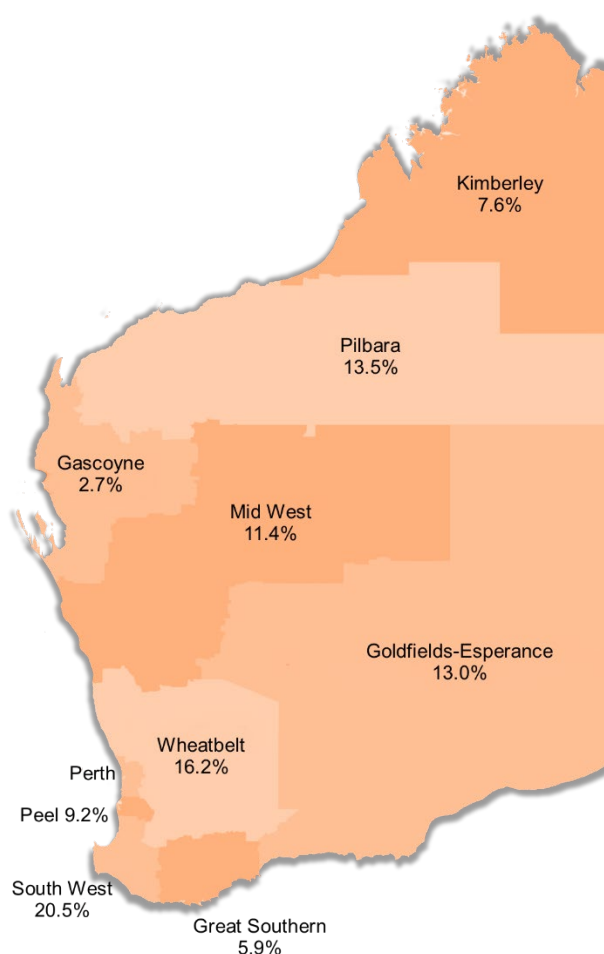
Of the 1,108 responded enquiries, 83.8 percent related to the Act and 16.2 percent were deemed outside of jurisdiction and referred to organisations including, but not limited to:

- Non-government organisations, mainly community legal centres (5.3%)
- WA Government departments or agencies (5.3%)
- The Australian Human Rights Commission (4.9%).

The remainder of enquiries made up less than one percent and were referred to an appropriate body for assistance where possible.

This included agencies such the Fair Work Commission, Fair Work Ombudsman, community legal centres or the relevant union or employer body.

**Figure 8: Regional enquiries 2023-24**



## 2. Enquiry Summary

### Pregnancy in employment

The enquirer is an employment agent. The agent sources employees to his clients (the employers). The employer then employs the people the agent sources directly. The enquirer asked who was liable if a couple of years later the employer discriminates against the employee the agency sourced for the employer because she is pregnant.

*Outcome: Enquiry officer explained that if the employer employs the person directly, that would be the end of the agency's responsibility. The employer would be liable, not the agency. However, if the agency knew or ought to have known the employer was likely to discriminate or sexually harass an employee and, knowing that, they still refer the prospective employee to that employer, the agent could be liable under s160.*

# Conciliation services

Conciliation Services delivers the Commissioner's statutory function of endeavouring to resolve complaints of alleged unlawful discrimination, harassment and victimisation, through a process largely defined by investigation and conciliation.

The Commission's complaint management realised further improvement as its officers became fully conversant with the Integrated Courts Management System used to record the complaint process. In addition, the ongoing review of standard letters and documents sent to complainants and respondents continued to ensure they are more accessible to a wider client base.

The Annual Report counts complaints that have been finalised in the financial year since it is not until a matter has been finalised that an outcome can be reported.

## Complaint process

The Commission investigates complaints of unlawful discrimination, harassment and victimisation by obtaining information and documents relevant to the allegations made by the complainant.

For the Commissioner to accept a complaint of unlawful discrimination for investigation, it must fall within the grounds and areas provided by the *Equal Opportunity Act 1984* (the Act).

Unlawful discrimination may have occurred where a person alleges they have been treated less favourably because of one or more of the grounds of unlawful discrimination under the Act and the treatment occurred in one or more of the areas of public life listed in the Act. Some grounds do not apply in all areas of public life therefore allegations with a ground but without an applicable area, cannot be accepted for investigation.

In addition to the grounds of discrimination specified in the Act, there are other matters which are unlawful in WA and can be investigated. These include victimisation and advertising. Victimisation under the Act is where a person is subjected to adverse treatment for asserting their rights under the Act; lodging a complaint of unlawful discrimination or agreeing to be a witness. Any form of advertising can be investigated by the Commission when it includes an express statement which indicates there could be a breach of the Act.

In addition, there are two other grounds of unlawful discrimination arising from other WA statutes, which confer jurisdiction to the Commissioner to investigate, conciliate or refer to the State Administrative Tribunal (the Tribunal) for determination as follows:

- i) Victimisation for making a disclosure under the *Public Interest Disclosure Act 2003*; and
- ii) Discrimination on the ground of a spent conviction in employment-related areas under the *Spent Convictions Act 1988*.

For a complaint to be accepted it must relate to at least one of the protected grounds of the *Equal Opportunity Act 1984* (the Act). The grounds in a complaint also need to correspond to a relevant area of public life.

| Ground  | Employment | Education | Accommodation | Goods, Services and Facilities | Access to Places and Vehicles | Clubs | Land | Superannuation | Sport | Victimisation - Public Interest Disclosure |
|---|------------|-----------|---------------|--------------------------------|-------------------------------|-------|------|----------------|-------|--|
| Age   | ✓          | ✓         | ✓             | ✓                              | ✓                             | ✓     | ✓    | ✓              | ✓     |  |
| Breastfeeding   | ✓          | ✓         | ✓             | ✓                              | ✓                             | ✓     |      |                |       |  |
| Family Responsibility                                     | ✓          | ✓         |               |                                |                               |       |      |                |       |  |
| Family Status   | ✓          | ✓         |               |                                |                               |       |      |                |       |  |
| Gender History  | ✓          | ✓         | ✓             | ✓                              | ✓                             | ✓     | ✓    | ✓              | ✓     |  |
| Impairment  | ✓          | ✓         | ✓             | ✓                              | ✓                             | ✓     |      | ✓              | ✓     |  |
| Marital Status  | ✓          | ✓         | ✓             | ✓                              | ✓                             | ✓     | ✓    |                |       |  |
| Political Conviction                                      | ✓          | ✓         | ✓             | ✓                              |                               | ✓     |      |                |       |  |
| Pregnancy   | ✓          | ✓         | ✓             | ✓                              | ✓                             | ✓     | ✓    |                |       |  |
| Publication of Name in Fines Enforcement Registry Website | ✓          |           | ✓             | ✓                              |                               |       |      |                |       |  |
| Race  | ✓          | ✓         | ✓             | ✓                              | ✓                             | ✓     | ✓    |                |       |  |
| Racial Harassment   | ✓          | ✓         | ✓             |                                |                               |       |      |                |       |  |
| Religious Conviction                                      | ✓          | ✓         | ✓             | ✓                              |                               | ✓     |      |                |       |  |
| Sex   | ✓          | ✓         | ✓             | ✓                              | ✓                             | ✓     | ✓    |                |       |  |
| Sexual Harassment   | ✓          | ✓         | ✓             |                                |                               |       |      |                |       |  |
| Sexual Orientation  | ✓          | ✓         | ✓             | ✓                              | ✓                             | ✓     | ✓    |                |       |  |
| Spent Conviction  | ✓          |           |               |                                |                               |       |      |                |       |  |
| Victimisation   | ✓          | ✓         | ✓             | ✓                              | ✓                             | ✓     | ✓    | ✓              | ✓     |  |
| Victimisation - Public Interest Disclosure                |            |           |               |                                |                               |       |      |                |       | ✓  |

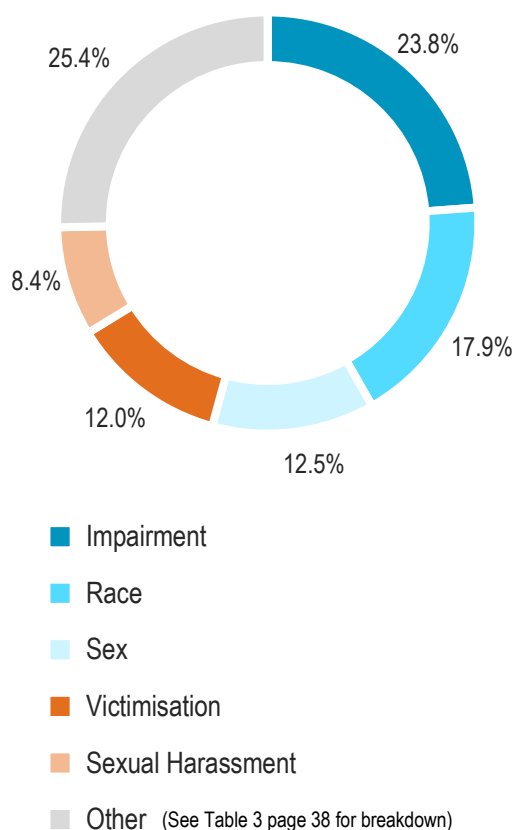
- ✓ Equal Opportunity Act applies
- Ground or Area not applicable

## Grounds

The top grounds of complaint finalised in 2023-24 were impairment at 23.8 percent; race at 17.9 percent; sex at 12.5 percent; victimisation at 12.0 percent and sexual harassment at 8.4 percent.

Impairment covers complaints lodged by people with physical, psychological, sensory or other impairments, as well as those with a short-term injury.

**Figure 9: Ground of complaints finalised 2023-24**



## 1. Complaint Summary

### Impairment in access to places and vehicles

A man visiting a pub for lunch, exited the venue and stood on the public footpath close to the entrance to smoke his medicinal cannabis. Upon re-entering the venue, he was refused further service.

The respondent showed that under the Liquor Licensing Act and Health Act patrons are not permitted to smoke within five metres of entrances to a licensed premise.

*Outcome: Complaint dismissed as lacking in substance.*

## 2. Complaint Summary

### Religious conviction in employment

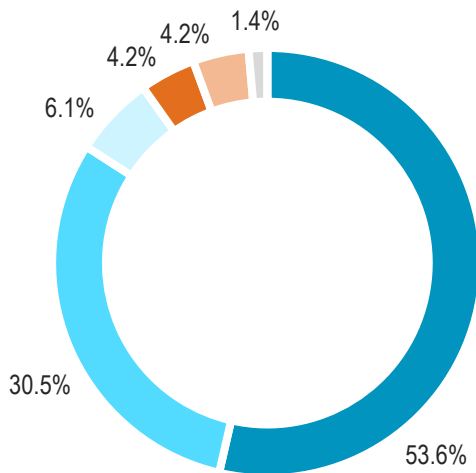
An employee was denied the ability to pursue the requirements of his religion and alleged religious conviction discrimination employment.

*Outcome: After discussions he was allowed the right to pursue his religious observances and was provided with a transfer to another workplace.*

### Areas

When broken down into areas, the top five areas are employment at 53.6 percent, goods, services and facilities at 30.5 percent, accommodation at 6.1 percent, and access to places and vehicles at 4.2 percent.

**Figure 10: Area of complaints finalised 2023-24**



- Employment
- Goods, Services and Facilities
- Accommodation
- Access to Places and Vehicles
- Education
- Other (See Table 4 page 38 for breakdown)

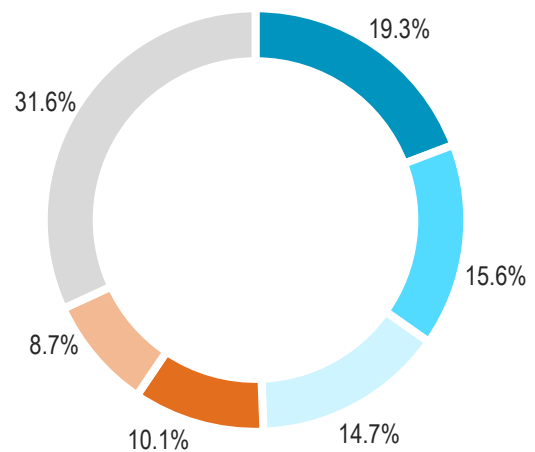
### Employment

Employment / work covers:

- Employees/applicants
- Contract workers
- Commission agents
- Partnerships

Of the employment complaints finalised in the 2023-24 financial year, 13.3 percent were made by job applicants. The highest outcome for complaints made by job applicants was conciliation at 44.8 percent.

**Figure 11: Ground of employment complaints finalised 2023-24**



- Impairment
- Sexual Harassment
- Victimisation
- Sex
- Racial Harassment
- Other (See Table 5 page 38 for breakdown)

## 3. Complaint Summary

### Impairment in employment

A job applicant who, due to a childhood injury, only had part of one hand, underwent a pre-employment medical and was denied progression by the overseeing doctor, and his job application was subsequently terminated despite him having extensive work experience in the role he had applied for.

*Outcome: The matter resolved with an apology and the respondents agreed to review their processes and policies for pre-employment medicals and the job applicant received financial compensation of \$37,500.*

The Commissioner has the power to compel complainants and respondents to provide information, produce documents and attend conferences. The Commissioner may dismiss a complaint at any stage if satisfied the complaint is misconceived, frivolous or vexatious, lacks substance, or relates to an act that is not unlawful by reason of a provision of the Act.

Should the Commissioner determine the complaint is to be dismissed, the complainant has the right to require the matter be referred to the State Administrative Tribunal (Tribunal).

Where the Commissioner has not dismissed a complaint and is of the opinion the complaint may be resolved, a Conciliation Officer endeavours to resolve the complaint by conciliation. The Conciliation Officer is impartial and does not represent or advocate for either party.

Resolution may be achieved through an exchange of correspondence or by a conciliation conference which the parties attend.

Conferences may be conducted face-to-face, by a teleconference or by videoconference.

Some of the outcomes the complainant and respondent may agree to include:

- Providing an apology
- Making available something that was previously refused, such as accommodation, admission to a course or access to a venue
- Introducing or improving equal opportunity policies and practices
- Compensation for a specific loss e.g. income
- Compensation for emotional harm e.g. pain and suffering.

If the complaint is not resolved the Commissioner will review the complaint file and may request additional information from either or both parties; dismiss the complaint; or refer the matter to the Tribunal. If the complaint is dismissed, the complainant may have the matter referred to the Tribunal.

## 4. Complaint Summary

### Race in goods, services and facilities

An Ethiopian man alleged race discrimination against a café because of a derogatory term used in their promotional material and menu booklet. The term used was offensive to people in a particular area of Ethiopia.

The complainant tried unsuccessfully to address the matter with the café manager and the café's head office, so lodged a complaint with the Commission.

*Outcome: The complaint was resolved when Head office reprinted the publications and replaced the offensive word.*

## Complaints finalised

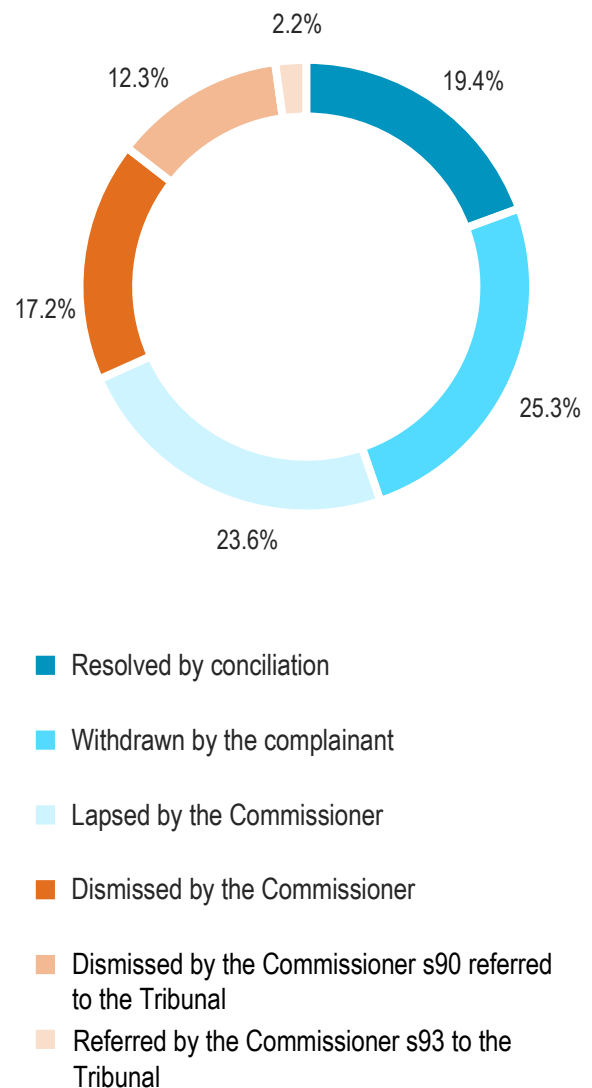
The Commission finalised 407 complaints in the 2023-24 financial year.

Of the complaints finalised 19.4 percent were conciliated; 25.3 percent were withdrawn; 23.6 percent were lapsed; 17.2 percent were dismissed and required no further action; 12.3 percent were dismissed and subsequently referred by the complainant to the Tribunal under section 90; and 2.2 percent were referred to the Tribunal under section 93.

The Act specifies a complaint can be finalised in one of the following ways:

- **Resolved by conciliation** when complainant and respondent achieve a mutually agreed outcome
- **Withdrawn by the complainant** at any time. This may occur based on the initial response from the respondent, election to move to another jurisdiction, or an inability to provide evidence
- **Lapsed by the Commissioner** if there is no response to attempts to contact the complainant, or if the person does not provide information to actively pursue the complaint
- **Dismissed by the Commissioner** if it is lacking in substance, misconceived, vexatious or frivolous
- **Dismissed by the Commissioner s90 referred** a complainant can in writing require a dismissed complaint be referred to the Tribunal
- **Referred under s93 to the Tribunal by the Commissioner** if the complaint cannot be conciliated and the Commissioner determines there is an arguable case.

**Figure 12: Outcome of complaints finalised 2023-24**



## 5. Complaint Summary

### Sexual harassment in employment

An employee lodged a complaint of sexual harassment because a work colleague commented on her appearance and body, purposely touched her on the hips and lower back and made comments that he was jealous of her male friends.

*Outcome: She decided to withdraw her complaint because after telling her employer about the matter she said they handled the situation professionally.*

## Conciliation

Conciliation brings complainants and respondents together in a non-adversarial environment to determine if a complaint can be resolved. The outcomes of this process vary depending on the parties involved and the situation.

Figure 13 shows the outcomes of conciliated complaints. Many of these conciliated complaints were resolved with more than one outcome, for instance a monetary settlement, a policy change and an apology.

Conciliated complaints finalised with a monetary settlement were the highest at 34.2 percent, followed by an apology at 31.6 percent and an explanation from the respondent at 19 percent.

Race complaints were the most conciliated complaints at 25.3 percent, followed by impairment 22.8 percent, sex 11.4 percent and age at 8.9 percent.

The area of public life with the most conciliated complaints was employment at 55.7 percent, followed by goods, services and facilities at 30.4 percent.

### 6. Complaint Summary

#### Race in goods, services and facilities

An Aboriginal person lodged a complaint on the ground of race discrimination in the area of goods, services and facilities because she was asked to present her bag for inspection when leaving the store while non-Aboriginal customers were not.

*Outcome: The matter resolved in conciliation. The complainant was given financial compensation and employees participated in cultural awareness training.*

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*This certainly has been a journey of a difference. I feel very fortunate to have had you as my go-to when I was unsure, very confused and extremely scared about the un-known."*

*– Respondent*

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*I don't know how to convey a heartfelt thank you to you for the outstanding work you did in resolving this issue. I am completely satisfied with the outcome and am more than happy to officially close the case. Your dedication and efforts are truly appreciated."*

*– Complainant*

---

**Figure 13: Conciliated outcomes finalised 2023-24**

| Conciliation Outcome                               | %     |
|--|-------|
| Monetary settlement                                | 34.2% |
| Apology  | 31.6% |
| Respondent explanation satisfactory to complainant | 19.0% |
| Equal opportunity training                         | 12.7% |
| Private settlement                                 | 11.4% |
| Provision of goods and services                    | 7.6%  |
| Provision of conditions and entitlements           | 6.3%  |
| Job offer  | 5.1%  |
| Policy change                                      | 3.8%  |
| Job reconsideration                                | 1.3%  |
| Provision of accommodation                         | 1.3%  |

### Time taken to resolve complaints

In 2023-24 the average length of time taken to resolve complaints was 4.5 months.

The Commission aims to finalise complaints in a timely and impartial manner that ensures interested parties are treated fairly and can achieve satisfactory outcomes.

Where the parties have reached an agreement to resolve the complaint and provided the agreement to the Commission, the Commission may decide not to finalise the complaint until all undertakings in the agreement have been met. This enables the complaint to be reactivated if the complainant advises the Commission that the agreement has not been met.

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**4.5 months** *was the average time taken to resolve complaints*

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# Legal services

The legal officers in Legal Services assess potential complaints of unlawful discrimination lodged with the Commission, provide advice to the Commissioner and conciliation officers regarding complaints under investigation, assist complainants at the State Administrative Tribunal (Tribunal) where a complaint is referred under s93 of the *Equal Opportunity Act 1984* (the Act) and prepare responses to state and federal inquiries and consultations.

Legal officers also review the Commission's publications, and draft ministerial and other correspondence. They provide advice and guidance to government agencies regarding the application of the Act to new and existing policies and practices.

Legal officers deliver presentations to employers, tertiary institutions, community organisations, and government agencies on the application of the Act. They also represent the Commissioner before the Tribunal on exemption applications, parliamentary committees, and other forums as required.

## State Administrative Tribunal

Referral of complaints to the Tribunal can occur in one of two ways:

**(i) If the complaint has not been dismissed, and:**

- the complaint cannot be resolved by conciliation; or
- endeavours to resolve the complaint by conciliation have been unsuccessful; or
- the Commissioner is of the opinion the nature of the complaint is such that the matter should be referred to the Tribunal;

the Commissioner must refer the complaint to the Tribunal under s93.

**(ii) If the complaint has been dismissed, the Commissioner must refer the complaint under s90, if requested by the complainant.**

In each case, a report of the complaint investigation is provided to the Tribunal upon referral.

The Commissioner must provide assistance if requested by complainants whose complaints have been referred to the Tribunal under s93 of the Act. This is usually done by assigning one of the Commission's legal officers to advise and represent the complainant.

The Commissioner does not provide assistance where a complaint has been dismissed and referred to the Tribunal under s90.

At the Tribunal, complainants can choose to represent themselves or engage representation, regardless of how a complaint is referred to the Tribunal.

When the matter is referred to the Tribunal, the complainant is described as the 'applicant' under the *State Administrative Tribunal Act 2004*.

## Case Summary - Race in access to places and vehicles and in the provision of goods and services

### Background

An Aboriginal couple and Dockers members regularly park their car at Burswood Casino and flag a taxi to take them to Optus Stadium when their team is playing there, to ensure they arrive at the game on time and avoid the late afternoon traffic.

The couple had both worked that day, so had not consumed alcohol and as was their usual practise, parked their car at Burswood Casino. The woman alleged as she approached the respondent's taxi and asked for a ride to the stadium, the respondent refused and said, 'No! No way am I taking you two!'

The man asked the respondent if he was refusing to take them because they were black. The taxi driver refused to answer him, so the man took photos of the taxi and the respondent.

### What did we do?

The couple lodged a complaint alleging the respondent refused their fare because of their Aboriginality, and/or because of a characteristic that is generally imputed to Aboriginal persons.

The Commission attempted to resolve the matter in conciliation; however, the matter could not be resolved, so the Commissioner referred it to the State Administrative Tribunal under s93 of the *Equal Opportunity Act 1984* with legal assistance from the Commission.

The member of the Commission's legal team assisting the couple argued the taxi driver had discriminated against the couple because of their race by refusing them access to a vehicle (the taxi) and refusing to provide them a service (the ride to Optus Stadium).

He argued this had caused serious hurt and humiliation to the couple who were proud members of the Noongar nation and well-respected members of the Perth community.

### Outcome

The matter was resolved at the Tribunal when the respondent provided a verbal apology during mediation for any hurt and humiliation they may have suffered because of his actions. The respondent also agreed to pay \$3,000 as compensation for the alleged discrimination.

## Case Summary - Impairment in goods and services

### Background

A man on the autism spectrum who lives in a WA Autism shared house under 24-hour supervision has an uncle who cares for him.

Due to his impairment the man cannot manage his own finances and in 2018 the State Administrative Tribunal appointed the man's uncle and the Public Trustee of Western Australia as his plenary administrators.

The Public Trustee deals with the applicant's day-to-day expenses, while his uncle manages the bulk of the man's \$24,500 inheritance from his grandmother and decides how to invest it.

In 2018 the respondent, an online broker with a trading platform, became the service provider for the man's investments managed by his uncle and in 2022 the trading account was transferred to the respondent's platform. Following this the uncle was asked to provide a copy of the Tribunal guardianship and administration orders, which he did together with a completed and signed Authorised Agent Form.

The respondent then contacted the man's uncle and advised him that the man could not hold a share account and the respondent said this was the advice the New South Wales Civil and Administrative Tribunal (NCAT) gave him.

When the uncle called the NCAT they said they did not give that advice, in fact they do not give advice. The man's uncle lodged a complaint with the Commission on the man's behalf.

### What did we do?

When contacted by the Commission the respondent confirmed they were closing the applicant's trading account. Again, the respondent did not provide any reason for their decision. It was only six months later that the respondent replied to the Commission's correspondence explaining they closed the account because the uncle's guardianship orders did not grant financial management powers and had a review date, contrary to the respondent's policy. The Commissioner referred the matter to the Tribunal under s93.

### Outcome

The parties reached a settlement prior to mediation at the Tribunal when the respondent created a new trading account for the man, organised the return of his equities to that new trading account, paid \$1,000 into the new trading account as compensation for the alleged discrimination and granted ten trades free from brokerage fees for up to two years from the settlement date.

## Case Summary - Impairment in employment

### Background

The complainant applied for a job as a driver of a large vehicle. He was successful in the recruitment process, so was referred for a medical assessment with the respondent's medical assessor. The respondent had previously entered an arrangement whereby it instructed the medical assessor to declare applicants either 'fit' or 'unfit'. The assessor was not permitted to provide the respondent with the applicant's confidential medical information, including whether an applicant required further medical assessment.

If, in the opinion of the medical assessor, an applicant required further assessment after undergoing the initial assessment, the respondent's instructions were the applicant be declared 'unfit' and the respondent would reject the job applicant's application, which is what happened to the complainant. The complainant did not know why he had been declared medically unfit because no explanation was provided, but he suspected it was because of his managed mental health condition.

### What did we do?

The complainant lodged a complaint against the respondent with the Commission. After lodging his complaint, the complainant applied again for the job, and underwent another medical assessment. This time he was successful, and in February 2024 was placed in a pool, from which the respondent would select drivers as positions became available.

The respondent denied it had unlawfully discriminated against the complainant. The medical assessor was joined as a respondent under s160 of the Act, after the complainant lodged his complaint against the first respondent. As the complaint could not be conciliated against either the first respondent or the medical assessor, it was referred to the Tribunal under to s93 of the Act, with legal assistance provided to the complainant by the Commission's Senior Legal Officer.

### Outcome

The Tribunal referred the complaint to mediation. The parties reached a settlement agreement at mediation, the terms of which were incorporated into a deed of settlement. The first respondent and the medical assessor each agreed to pay the complainant \$10,000 (\$20,000 in total) as compensation for the alleged unlawful discrimination (not loss of earnings). Both respondent parties also agreed to provide the complainant with a letter of regret for the confusion and mistakes that were made during the recruitment process. The first respondent agreed to offer the complainant the next available Perth-based position in the pool on a permanent, full-time basis.

## Case Summary - Impairment in employment

### Background

A registered nurse (the complainant) employed by a health service provider commenced a pre-employment health assessment as part of her application for an Intensive Care Unit (ICU) training program.

She resigned from her previous casual working position and relocated from her rural residence to Perth to take up the position pending the health assessment.

Following the assessment the health service provider asked the complainant to provide an update from her treating respiratory and sleep specialist physician regarding her diagnosed severe obstructive sleep apnoea.

The specialist provided the report stating the nurse was medically fit to undertake the duties required of the program contingent on continued use of Continuous Positive Airway Pressure (CPAP) for more than four hours per night and an Apnoea-Hypopnea Index less than five. The report was delivered to the assessor who reassessed the complainant's application and found her suitable for the position, conditional on strict compliance with CPAP therapy.

The complainant received a letter from the health service provider confirming her acceptance into the program; however, a second letter was sent from the coordinator of nursing on behalf of the health service provider informing the complainant that if she were to be appointed to the ICU position, the onus would be placed on her manager to ensure strict compliance with her CPAP therapy.

The coordinator stated it would be impracticable for her manager to ensure the complainant's strict daily compliance with her CPAP therapy because they would have no ability to ensure she was using the CPAP machine every night. Consequently, the health service provider would not proceed with the complainant's appointment.

The complainant obtained a second report from the sleep specialist confirming the standards which apply to the use of CPAP therapy for those with clinically significant symptomatic obstructive sleep apnoea do not require the individual to use CPAP every night or for the entire night.

### What did we do?

The complainant lodged a complaint of impairment discrimination in the area of employment against the health service provider. The complaint could not be conciliated and was referred to the Tribunal by the Commissioner pursuant to s93 of the Act. The complainant was assisted in the Tribunal by the senior legal officer. The Tribunal referred the complaint to a mediation conference.

### Outcome

The complaint settled at the Tribunal in mediation. The respondent (the health service provider) agreed to pay the applicant (the nurse) \$16,000 as compensation for the alleged unlawful discrimination.

# Disclosures

## Reference by the Minister

Section 81(1) of the *Equal Opportunity Act 1984* (the Act) states:

- (1) The Minister may refer to the Commissioner for report any matter relating to –
  - a) a law or a proposed law; or
  - b) a practice, an alleged practice or a proposed practice of any person or class of persons, which conflicts with or may give rise to conflict with this Act.

In 2023-24, no references were made by the Minister to the Commissioner for Equal Opportunity pursuant to s81(1) of the Equal Opportunity Act.

## Industrial Relations Act 1979

Section 29(1)(b)(vii) of the *Industrial Relations Act 1979* provides that the Commissioner for Equal Opportunity may refer certain industrial matters to the Industrial Relations Commission. In 2023-24, no matters were referred to the Industrial Relations Commission by the Commissioner for Equal Opportunity and no referrals were outstanding.

## Public Interest Disclosure Act 2003

Section 15 of the *Public Interest Disclosure Act 2003* states:

- (4) An act of victimisation under this Act may be dealt with under the *Equal Opportunity Act 1984* as if it were an act that was unlawful under s67 of that Act but, if the victim commences proceedings in a court under subsection (1), he or she cannot subsequently lodge a complaint under the *Equal Opportunity Act 1984* because of the act and, conversely, if the victim lodges a complaint under that Act because of the act, he or she cannot subsequently commence

proceedings under subsection (1) because of the act.

- (5) If a complaint alleging an act of victimisation under this Act has been lodged with the Commissioner for Equal Opportunity and the Commissioner is of the opinion that the subject matter of the complaint has already been adequately dealt with by a competent authority, the Commissioner may decline to act on the complaint or to proceed further with action on the complaint.

In 2023-24 no Public Interest Disclosure (PID) victimisation complaints were finalised by the Commissioner for Equal Opportunity. At the end of 2023-24 no PID victimisation complaints remained outstanding.

## Spent Conviction Act 1988

Section 29 of the *Spent Convictions Act 1988* provides that a person may lodge a complaint in relation to alleged discrimination on the ground of a spent conviction or the charge to which it relates, as if such discrimination were a form of discrimination to which the Equal Opportunity Act applies.

In the financial year the Commissioner for Equal Opportunity finalised one spent conviction complaint. The complaint lapsed. At the end of 2023-24, no spent conviction complaints remained outstanding.

## Other reporting matters

The Equal Opportunity Commission transitioned from a stand-alone agency to be a part of the Department of Justice on 1 December 2020; however, remains independent in the performance of its statutory functions under the Act.

The Department of Justice 2023-24 Annual Report integrates various matters and information relating to the Equal Opportunity Commission that stand alone agencies are required to report.

## Freedom of information

Although part of the Department of Justice, the Equal Opportunity Commission independently manages Freedom of Information applications related to its statutory functions under the Equal Opportunity Act. The following information relates to the 2023-24.

| Summary of FOI applications            | No. |
|--|-----|
| Applications received                  | 1   |
| Applications processed                 | 1   |
| Personal information requests          | 1   |
| Non-personal information requests      | 0   |
| Amendment of personal information      | 0   |
| Applications transferred in full       | 0   |
| Outcomes                               | No. |
| Applications withdrawn                 | 0   |
| Internal reviews completed             | 0   |
| External reviews completed             | 0   |
| Applications currently being processed | 0   |

At the end of 2023-24, no reviews remain outstanding with the Information Commissioner.

Under s96 of the *Freedom of Information Act 1992*, government agencies are required to prepare and publish an information statement, conveying information to the public about the agency's operations, the kinds of documents it holds and the procedures for accessing them.

Much of the information about the Equal Opportunity Commission and its operations is set out in this Annual Report. Information about how to request documents and information held by the Commission can be found on the Commission's website at:

[OIC Freedom of Information \(FOI\) Request \(jotform.com\)](http://jotform.com)

# Appendices

## Appendix A: enquiry and complaint tables

### Enquiries

Table 1: Enquiries by ground

| Ground                      | 2023-24      | %          |
|-----------------------------|--------------|------------|
| Age                         | 34           | 3.1        |
| Breastfeeding               | 7            | 0.6        |
| Bullying                    | 26           | 2.3        |
| Family responsibility       | 26           | 2.3        |
| Family status               | 6            | 0.5        |
| Gender history              | 2            | 0.2        |
| Gender identity             | 4            | 0.4        |
| Impairment                  | 276          | 24.9       |
| Marital status              | 3            | 0.3        |
| Political conviction        | 4            | 0.4        |
| Pregnancy                   | 15           | 1.3        |
| Fines enforcement registry* | 1            | 0.1        |
| Race                        | 126          | 11.4       |
| Racial harassment           | 5            | 0.5        |
| Racial vilification         | 3            | 0.3        |
| Religious conviction        | 9            | 0.8        |
| Sex                         | 39           | 3.5        |
| Sexual harassment           | 20           | 1.8        |
| Sexual orientation          | 4            | 0.4        |
| Spent conviction            | 16           | 1.4        |
| Victimisation               | 10           | 0.9        |
| Victimisation PID           | 3            | 0.3        |
| All grounds                 | 149          | 13.4       |
| Other                       | 75           | 6.8        |
| Not applicable              | 245          | 22.1       |
| <b>Total</b>                | <b>1,108</b> | <b>100</b> |

\*Publication of Name in Fines Enforcement Registry Website

Table 2: Enquiries by area

| Area                           | 2023-24      | %          |
|--------------------------------|--------------|------------|
| Access to places and vehicles  | 44           | 4.0        |
| Accommodation                  | 33           | 3.0        |
| Advertising                    | 1            | 0.1        |
| Clubs                          | 10           | 0.9        |
| Education                      | 37           | 3.3        |
| Employment                     | 414          | 37.4       |
| Goods, services and facilities | 167          | 15.1       |
| Insurance                      | 1            | 0.1        |
| Public place                   | 1            | 0.1        |
| Sport                          | 5            | 0.5        |
| All areas                      | 133          | 12.0       |
| Other                          | 54           | 4.8        |
| Not applicable                 | 208          | 18.7       |
| <b>Total</b>                   | <b>1,108</b> | <b>100</b> |

## Complaints

**Table 3: Complaints finalised by ground**

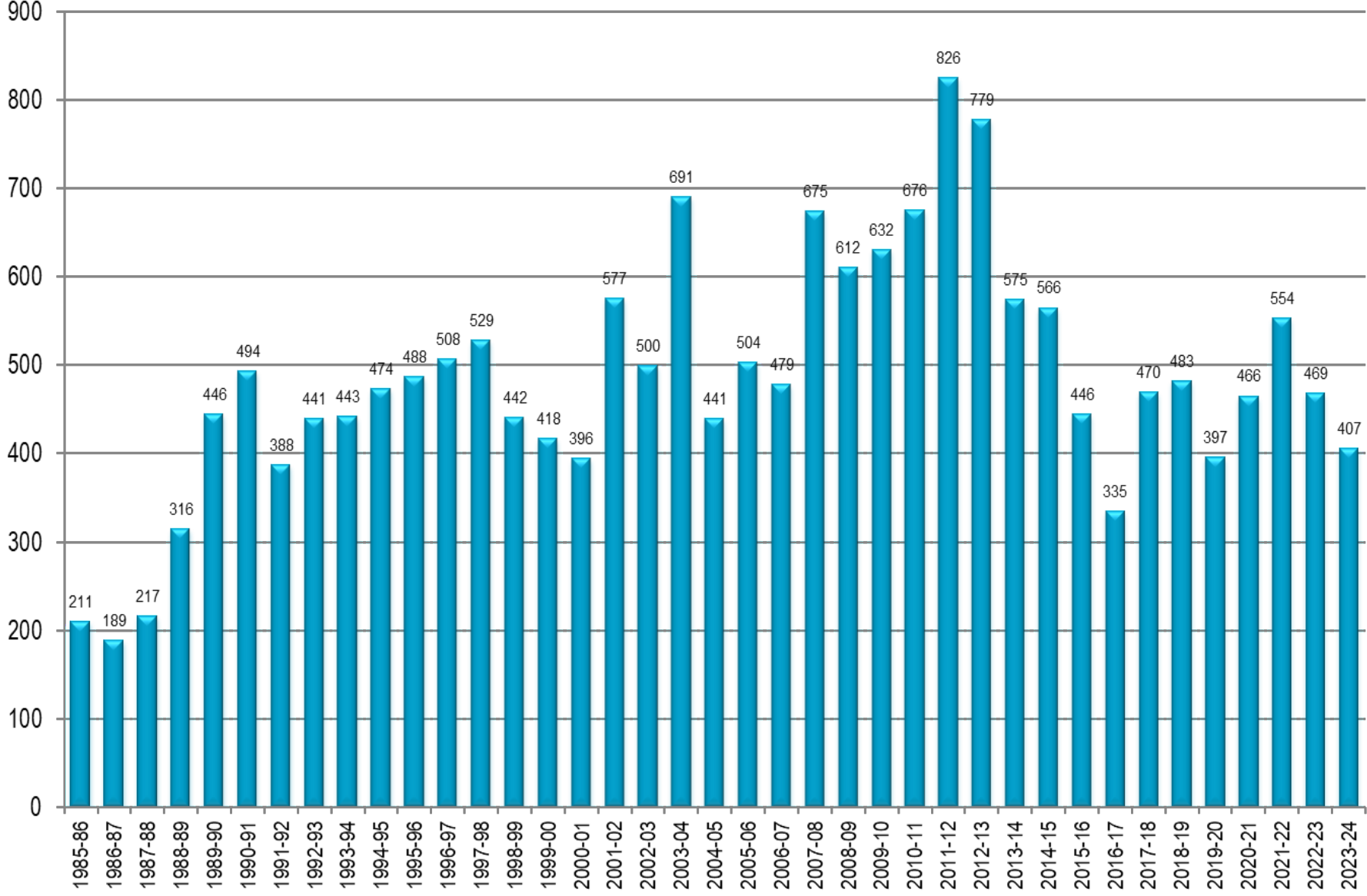
| Ground                | 2023-24    | %          |
|-----------------------|------------|------------|
| Age                   | 33         | 8.1        |
| Breastfeeding         | 1          | 0.3        |
| Family responsibility | 14         | 3.4        |
| Family status         | 6          | 1.5        |
| Impairment            | 97         | 23.8       |
| Marital status        | 5          | 1.2        |
| Political conviction  | 5          | 1.2        |
| Pregnancy             | 6          | 1.5        |
| Race                  | 73         | 17.9       |
| Racial harassment     | 21         | 5.2        |
| Religious conviction  | 8          | 2.0        |
| Sex                   | 51         | 12.5       |
| Sexual harassment     | 34         | 8.4        |
| Sexual orientation    | 3          | 0.7        |
| Spent conviction      | 1          | 0.3        |
| Victimisation         | 49         | 12.0       |
| <b>Total</b>          | <b>407</b> | <b>100</b> |

**Table 4: Complaints finalised by area**

| Area                           | 2023-24    | %          |
|--------------------------------|------------|------------|
| Access to places and vehicles  | 17         | 4.2        |
| Accommodation                  | 25         | 6.1        |
| Application Forms              | 1          | 0.2        |
| Clubs                          | 3          | 0.7        |
| Education                      | 17         | 4.2        |
| Employment                     | 218        | 53.6       |
| Goods, services and facilities | 124        | 30.5       |
| Sport                          | 2          | 0.5        |
| <b>Total</b>                   | <b>407</b> | <b>100</b> |

**Table 5: Employment complaints finalised by ground**

| Ground                | 2023-24    | %          |
|-----------------------|------------|------------|
| Age                   | 11         | 5.0        |
| Breastfeeding         | 1          | 0.5        |
| Family responsibility | 13         | 6.0        |
| Family status         | 6          | 2.7        |
| Impairment            | 42         | 19.3       |
| Marital status        | 3          | 1.4        |
| Political conviction  | 4          | 1.8        |
| Pregnancy             | 6          | 2.7        |
| Race                  | 18         | 8.3        |
| Racial harassment     | 19         | 8.7        |
| Religious conviction  | 4          | 1.8        |
| Sex                   | 22         | 10.1       |
| Sexual harassment     | 34         | 15.6       |
| Sexual orientation    | 2          | 0.9        |
| Spent conviction      | 1          | 0.5        |
| Victimisation         | 32         | 14.7       |
| <b>Total</b>          | <b>218</b> | <b>100</b> |



Appendix B: complaints finalised from 1985 to 2024

